

OREGON LEGISLATIVE ASSEMBLY—1969 REGULAR SESSION

Enrolled
House Bill 1515

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER.....

AN ACT

Relating to governmental tort liability; amending ORS 30.265, 30.270, 30.275, 30.320 and 221.924; repealing ORS 366.430, 368.940 and 382.320; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

Section 1. ORS 30.265 is amended to read:

30.265. (1) Subject to the limitations of ORS 30.260 to 30.300, every public body is liable for its torts and those of its officers, employes and agents acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function.

(2) ~~{Subsection (1) of this section does not apply to:}~~ Every public body is immune from liability for:

(a) Any claim for injury to or death of any person or injury to property resulting from an act or omission of an officer, employe or agent of a public body when such officer, employe or agent is immune from liability.

(b) Any claim for injury to or death of any person covered by the Workmen's Compensation Law.

(c) Any claim in connection with the assessment and collection of taxes.

~~{(d) Any claim based upon an act or omission of an officer, employe or agent, exercising due care, in the execution of a valid or invalid statute, charter, ordinance, resolution or regulation.}~~

~~{(e) (d) Any claim based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.}~~

~~{(f) (e) Any claim against a public body as to which the public body is immune from liability or its liability is limited} which is limited or barred by the provisions of any other statute.~~

~~{(g) As to any claim enumerated in subsection (2) of this section, a public body shall be liable only in accordance with any other applicable statute.}~~

(3) Neither a public body nor its officers, employes and agents acting within the scope of their employment or duties are liable for injury or damage:

(a) Arising out of riot, civil commotion or mob action or out of any act or omission in connection with the prevention of any of the foregoing.

(b) Because of an act done or omitted under apparent authority of a law, resolution, rule or regulation which is unconstitutional, invalid or inapplicable except to the extent that they would have been liable had the law, resolution, rule or regulation been constitutional, valid and

applicable, unless such act was done or omitted in bad faith or with malice.

(4) ORS 30.260 to 30.300 do not apply to any claim against any public body arising before July 1, 1968. Any such claim may be presented and enforced to the same extent and subject to the same procedure and restrictions as if ORS 30.260 to 30.300 had not been adopted.

Section 2. ORS 30.270 is amended to read:

30.270. (1) Liability of [any] a public body [on any claim] on claims within the scope of ORS 30.260 to 30.300 shall not exceed:

(a) [\$25,000 when the claim is one for damage to or destruction of property and \$50,000 to any claimant in any other case.] \$25,000 to any claimant for any number of claims for damage to or destruction of property, including consequential damages, arising out of a single accident or occurrence.

[(b) \$300,000 for any number of claims arising out of a single occurrence.]

(b) \$50,000 to any claimant for all other claims arising out of a single accident or occurrence.

(c) \$300,000 for any number of claims arising out of a single accident or occurrence.

(2) No award for damages on any such claim shall include punitive damages. The limitation imposed by this section on individual claimants includes damages claimed for loss of services or loss of support arising out of the same tort.

(3) Where the amount awarded to or settled upon multiple claimants exceeds \$300,000, any party may apply to any circuit court to apportion to each claimant his proper share of the total amount limited by subsection (1) of this section. The share apportioned each claimant shall be in the proportion that the ratio of the award or settlement made to him bears to the aggregate awards and settlements for all claims arising out of the occurrence.

Section 3. ORS 30.275 is amended to read:

30.275. (1) Every person who claims damages from a public body for or on account of any loss or injury within the scope of ORS 30.260 to 30.300 shall cause to be presented to [the governing body of] the public body within [45] 180 days after the alleged loss or injury a written notice stating the time, place and circumstances thereof, and the amount of compensation or other relief demanded. Claims against the State of Oregon shall be presented to the state agency against whom the claim is made or to the Attorney General. Claims against any other public body shall be presented to a person upon whom process could be served in accordance with subsection (2) of ORS 15.080. Failure to state the amount of compensation or other relief demanded does not invalidate the notice. [; but, in such case, the claimant shall furnish full information regarding the nature and extent of the injuries and damages within 30 days after written demand by the public body.]

(2) When the claim is for death, the notice may be presented by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has presented a notice that would have been sufficient had he lived, an action for wrongful death may be brought without any additional notice.

(3) No action shall be maintained unless such notice has been given and unless the action is commenced within [one year after such notice] two years after the date of such accident or occurrence. The time for giving such notice does not include the time, not exceeding 90 days, during which the person injured is [incapacitated by] unable to give the notice because of the injury [from giving the notice] or because of minority, incompetency or other incapacity.

Section 4. ORS 30.320 is amended to read:

30.320. A suit or action may be maintained against any county and against the State of Oregon by and through and in the name of the appropriate state agency upon a contract made by the county in its corporate character, or made by such agency and within the scope of its authority ~~for, and not otherwise;~~; provided, however, that no suit or action may be maintained against any county or the State of Oregon upon a contract relating to the care and maintenance of an inmate or patient of any county or state institution. An action or suit may be maintained against any other public corporation mentioned in ORS 30.310 ~~in its corporate character, and within the scope of its authority, or~~ for an injury to the rights of the plaintiff arising from some act or omission of such other public corporation *within the scope of its authority. An action may be maintained against any governmental unit mentioned in ORS 30.310 for liability in tort only as provided in ORS 30.260 to 30.300.*

Section 5. ORS 221.924 is amended to read:

221.924. ~~(1)~~ The council may, whenever it deems it expedient, improve the public grounds within any city referred to in ORS 221.906, and establish and open additional streets and alleys therein. The power and authority to improve streets includes the power and authority to construct, improve, pave, repair, and keep in repair, sidewalks and pavements, and to determine and provide everything convenient and necessary concerning such improvements and repairs.

~~(2) Any such city shall not in any event be liable for any damages to any person for injury caused by any defect, or dangerous place, at or in any sidewalk, crosswalk, street, alley, bridge, public ground, public building, or ditch, unless such city has had actual notice of such defect or dangerous place, and a reasonable time thereafter in which to repair or remove such defect or dangerous place before the happening of such accident or injury. In no case shall more than \$100 be recovered as damages from any such city for such accident or injury.~~

Section 6. ORS 366.430, 368.940 and 382.320 are repealed.

Section 7. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act shall take effect upon its passage.



Chapter

, Oregon Laws 1969

ENROLLED

House Bill 1515

Passed by House May 10, 1969
Repassed by House

.....
Chief Clerk of House

.....
Speaker of House
Passed by Senate May 19, 1969
Repassed by Senate

.....
President of Senate

Received by Executive Department:

..... M., , 1969.

Approved: , 1969.

.....
Governor

Filed in Office of Secretary of State:

..... M., , 1969.

.....
Secretary of State

OREGON LEGISLATIVE ASSEMBLY—1969 REGULAR SESSION

~~ENGROSSED~~ Enrolled

House Bill 1515

Sponsored by COMMITTEE ON JUDICIARY (at the request of the League of Oregon Cities, the Association of Oregon Counties and the Oregon School Boards Association)

CHAPTER.....

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Revises scope of governmental tort liability, related procedural provisions and recovery limitations. Directs that claims against state be presented to Attorney General and all others to appropriate public officers.

Creates immunity from tort liability for public officers, employes and agents as to claims arising out of certain governmental activities.

Declares an emergency.

NOTE: Matter in *italics* in an amended section is new; matter ~~lined out and bracketed~~ is existing law to be omitted; complete new sections begin with **Section .**

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[2]

~~A BILL FOR AN ACT~~

2 Relating to governmental tort liability; creating new provisions; amending
 3 ORS 30.265, 30.270, 30.275, 30.290, 30.300, 30.320 and 221.924; and declar-
 4 ing an emergency.

5 Be It Enacted by the People of the State of Oregon:

6 Section 1. ORS 30.265 is amended to read:

7 30.265. (1) Subject to the limitations of ORS 30.260 to 30.300, every
 8 public body is liable for its torts and those of its officers, employes and
 9 agents acting within the scope of their employment or duties, whether arising
 10 out of a governmental or proprietary function.

11 ~~Every public body is immune from liability for~~
 12 (2) [Subsection (1) of this section does not apply to:]

13 (a) Any claim for injury to or death of any person or injury to property
 14 resulting from an act or omission of an officer, employe or agent of a public
 15 body when such officer, employe or agent is immune from liability.

16 (b) Any claim for injury to or death of any person covered by the
 17 Workmen's Compensation Law.

18 (c) Any claim in connection with the assessment and collection of taxes.

19 {d) Any claim based upon an act or omission of an officer, employe or
 20 agent, exercising due care, in the execution of a valid or invalid statute, charter,
 21 ordinance, resolution or regulation.]

22 {e) (d) Any claim based upon the performance of or the failure to
 23 exercise or perform a discretionary function or duty, whether or not the
 24 discretion is abused.

25 {f) (e) Any claim against a public body as to which the public body is
 26 immune from liability or its liability is limited} which is limited or barred by
 27 the provisions of any other statute.

28 {f) Any claim except a claim for the recovery of, and limited to, com-
 29 pensatory damages for injury to or death of a person or injury to or
 30 destruction of tangible property}

31 (3) As to any claim enumerated in subsection (2) of this section, a
 32 public body shall be liable only in accordance with any other applicable
 33 statute.]

34 (4) ORS 30.260 to 30.300 do not apply to any claim against any public
 35 body arising before July 1, 1968. Any such claim may be presented and

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~~A BILL FOR AN ACT~~

2 Relating to governmental tort liability; creating new provisions; amending
3 ~~ORS 30.265, 30.270, 30.275, 30.285, 30.300, 30.320 and 221.924;~~ and declar-
4 ing an emergency.

5 Be It Enacted by the People of the State of Oregon:

6 Section 1. ORS 30.265 is amended to read:

7 30.265. (1) Subject to the limitations of ORS 30.260 to 30.300, every
8 public body is liable for its torts and those of its officers, employes and
9 agents acting within the scope of their employment or duties, whether arising
10 out of a governmental or proprietary function.

11 ~~Every public body is immune from liability for:~~
(2) Subsection (1) of this section does not apply to:

12 (a) Any claim for injury to or death of any person or injury to property
13 resulting from an act or omission of an officer, employe or agent of a public
14 body when such officer, employe or agent is immune from liability.
15 (b) Any claim for injury to or death of any person covered by the
16 Workmen's Compensation Law.

17 (c) Any claim in connection with the assessment and collection of taxes.
18 ~~(d) Any claim based upon an act or omission of an officer, employe or
19 agent, exercising due care, in the execution of a valid or invalid statute, charter,
20 ordinance, resolution or regulation.~~

21 ~~(e) Any claim based upon the performance of or the failure to
22 exercise or perform a discretionary function or duty, whether or not the
23 discretion is abused.~~

24 ~~(f) Any claim against a public body as to which the public body is
25 immune from liability or its liability is limited which is limited or barred by
the provisions of any other statute.~~

26 ~~(f) Any claim except a claim for the recovery of, and limited to, com-
27 pensatory damages for injury to or death of a person or injury to or
28 destruction of tangible property.~~

29 ~~(3) As to any claim enumerated in subsection (2) of this section, a
30 public body shall be liable only in accordance with any other applicable
31 statute.~~

32 ~~to any claim against any public~~
33 ~~7 (1) (3) Neither a public body nor its officers, employes and agents acting
34 bc 8 within the scope of their employment or duties are liable for injury or
9 damage:~~

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1 enforced to the same extent and subject to the same procedure and restric-
 2 tions as if ORS 30.260 to 30.300 had not been adopted.

3 Section 2. ORS 30.270 is amended to read:

4 30.270. (1) Liability of ~~{any}~~ a public body ~~{on any claim}~~ on claims
 5 within the scope of ORS 30.260 to 30.300 ~~and liability of officers, employees,~~
~~and agents of a public body on claims based on conduct within the scope~~
~~of their employment~~ shall not ~~exceed~~ately or in combination
 8 exceed:

9 (a) ~~\$25,000 when the claim is one for damage to or destruction of property~~
~~to any claimant~~
 10 ~~and \$50,000 to any claimant in any other case.~~ ~~\$25,000 for any number of~~
 11 ~~claims for damage to or destruction of property, including consequential~~
~~accident~~
 12 ~~damages, arising out of a single occurrence.~~

13 (b) ~~\$300,000 for any number of claims arising out of a single occurrence~~

14 (c) ~~\$50,000 to any claimant for all claims arising out of a single occur-~~

15 ~~rence.~~

16 (2) No award for damages ~~against a public body~~ on any such claim

17 shall include punitive damages. The limitation imposed by this section on
 18 individual claimants includes damages claimed for loss of services or loss
 19 of support arising out of the same tort.

20 (3) Where the amount awarded to or settled upon multiple claimants

21 exceeds ~~the \$25,000 limit of paragraph (a) of subsection (1) of this section~~

22 ~~or the \$300,000 limit of paragraph (b) of subsection (1) of this section~~

23 any party may apply to any circuit court to apportion to each claimant his
 24 proper share of the total amount limited by subsection (1) of this section.

25 The share apportioned each claimant shall be in the proportion that the
 26 ratio of the award or settlement made to him bears to the aggregate awards

27 and settlements for all claims arising out of the occurrence.

28 Section 3. ORS 30.275 is amended to read:

29 30.275. (1) Every person who claims damages from a public body for
 30 or on account of any loss or injury within the scope of ORS 30.260 to
 31 30.300 shall cause to be presented to ~~{the governing body of}~~ the public
 32 body within ~~45~~¹⁸⁰ days after the alleged loss or injury a written notice stating
 33 the time, place and circumstances thereof, and the amount of compensation
 34 or other relief demanded. *Claims against the State of Oregon shall be*

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~~State agency against whom the claim is made is to the~~
 1 presented to the Attorney General. Claims against any other public body
 2 shall be presented to a person upon whom process could be served in
 3 accordance with subsection (2) of ORS 15.080. Failure to state the amount
 4 of compensation or other relief demanded does not invalidate the notice
 5 but, in such case, the claimant shall furnish full information regarding the
 6 nature and extent of the injuries and damages within 30 days after written
 7 demand by the public body.]

8 (2) When the claim is for death, the notice may be presented by the
 9 personal representative, surviving spouse or next of kin, or by the consular
 10 officer of the foreign country of which the deceased was a citizen, within
 11 one year after the alleged injury or loss resulting in such death. However,
 12 if the person for whose death the claim is made has presented a notice
 13 that would have been sufficient had he lived, an action for wrongful
 14 death may be brought without any additional notice.

15 (3) No action shall be maintained unless such notice has been given
~~two years after the date of such accident or occurrence,~~
 16 and unless the action is commenced within one year after such notice. The
 17 time for giving such notice does not include the time, not exceeding 90
 18 days, during which the person injured is [incapacitated by] unable to give
 19 the notice because of the injury [from giving the notice] or because of
 20 minority, incompetency or other incapacity.

21 ~~+ Section 4. ORS 30.285 is amended to read:~~

22 30.285. (1) The governing body of any public body may defend, save
 23 harmless and indemnify any of its officers, employes and agents, whether
 24 elective or appointive, against any tort claim or demand, whether ground-
 25 less or otherwise, arising out of an alleged act or omission occurring in the
 26 performance of duty.

27 (2) The provisions of subsection (1) of this section do not apply in
 28 case of malfeasance in office or wilful or wanton neglect of duty.

29 (3) This section does not repeal or modify ORS 243.510 to 243.620.

30 (4) A determination by the governing body of a public body that one of
 31 its officers, employes or agents is eligible for assistance in accordance with
 32 subsections (1) and (2) shall be final and conclusive evidence of such
 33 eligibility; provided, however, that the governing body may require reim-
 34 bursement as provided in subsection (2) of ORS 243.620.

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1 Section 5. ORS 30.300 is amended to read:

2 30.300. ORS 30.260 to 30.300 ~~is exclusive and~~ supersedes all ~~home rule~~
 3 conflicting city and county charter provisions on the same subject and all
 4 conflicting laws and ordinances on the same subject.

5 **Section 6.** Sections 7 to 9 of this Act are added to and made a part of
 6 ORS chapter 30.

7 **Section 7.** If a public body is under a mandatory duty imposed by a
 8 constitutional, statutory or charter provision designed to protect against
 9 the risk of a particular kind of injury, its failure to discharge such duty
 10 shall not constitute negligence per se and it shall only be liable for failure
 11 to exercise reasonable care to discharge the duty.

12 **Section 8.** Neither a public body nor is officers, employes and agents
 13 acting within the scope of their employment or duties are liable for injury
 14 or damage because of:

15 (1) Failure to establish a police or fire department or otherwise to
 16 provide police or fire protection service, or, if a public body has undertaken
 17 to provide police or fire protection service, because of failure to provide
 18 or maintain sufficient personnel, equipment or other police or fire protec-
 19 tion facilities.

20 (2) The issuance, denial, suspension or revocation of, or the failure or
 21 refusal to issue, deny, suspend or revoke, any permit, license, certificate,
 22 approval, order or similar authorization where the public body or its
 23 officer, employe or agent is authorized by law to determine whether or
 24 not such authorization should be issued, denied, suspended or revoked.

25 (3) Failure to make an inspection, or by reason of making an inadequate
 26 or negligent inspection of any real or personal property.

27 (4) Adoption or failure to adopt any law, resolution, rule or regulation,
 28 or because of failure to enforce any law, resolution, rule or regulation.

29 (5) Dissemination of information, failure to disseminate information,
 30 dissemination of erroneous information, or negligent misrepresentation.

31 (6) The occurrence or failure to prevent riot, unlawful assembly, public
 32 demonstration, mob violence or other civil disturbance.

33 (7) An act done or omitted under apparent authority of a law, resolu-
 34 tion, rule or regulation which is unconstitutional, invalid or inapplicable

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[6]

except to the extent that they would have been liable had the law, resolution, rule or regulation been constitutional, valid and applicable, unless such act was done or omitted in bad faith or with malice.

Section 9. Except as otherwise provided by statute, an officer, employe or agent of a public body is not liable for an injury caused by the act or omission of another person. Nothing in this section exonerates such an officer, employe or agent from liability for injury proximately caused by his own negligent or wrongful conduct.

Section ~~10~~ ORS 30.320 is amended to read:

30.320. A suit or action may be maintained against any county and against the State of Oregon by and through and in the name of the appropriate state agency upon a contract made by the county in its corporate character, or made by such agency and within the scope of its authority ~~+, and not otherwise;~~; provided, however, that no suit or action may be maintained against any county or the State of Oregon upon a contract relating to the care and maintenance of an inmate or patient of any county or state institution. An action or suit may be maintained against any other public corporation mentioned in ORS 30.310 ~~+ in its corporate character, and within the scope of its authority, or~~ for an injury to the rights of the plaintiff arising from some act or omission of such other public corporation ~~within the scope of its authority. An action may be maintained against any governmental unit mentioned in ORS 30.310 for liability in tort only as provided in ORS 30.260 to 30.300.~~

Section ~~11~~ ORS 221.924 is amended to read:

221.924. ~~+(1)+~~ The council may, whenever it deems it expedient, improve the public grounds within any city referred to in ORS 221.906, and establish and open additional streets and alleys therein. The power and authority to improve streets includes the power and authority to construct, improve, pave, repair, and keep in repair, sidewalks and pavements, and to determine and provide everything convenient and necessary concerning such improvements and repairs.

~~32 +(2) Any such city shall not in any event be liable for any damages to any person for injury caused by any defect, or dangerous place, at or in any sidewalk, crosswalk, street, alley, bridge, public ground, public building, or ditch;~~

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unless such city has had actual notice of such defect or dangerous place, and a reasonable time thereafter in which to repair or remove such defect or dangerous place before the happening of such accident or injury. In no case shall more than \$100 be recovered as damages from any such city for such accident or injury. [36 b. 4 30, 368, 940 and 382, 320 are referred to].
Section 6. ORS 36 b. 4 30, 368, 940 and 382, 320 are referred to.
Section 7. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act shall take effect upon its passage.

SENATE COMMITTEE REPORT

Salem, Oregon May 15, 1969

Mr. President:

Your Committee on Judiciary to whom was referred
House Bill 1515, having had the same under
consideration, respectfully report it back with the recommendation that it:

Do pass: _____ Do pass with amendments:
Be adopted: _____ Be adopted with amendments:
_____ Do pass with amendments to the printed engrossed bill.
_____ (Referred to Committee on Ways & Means by prior reference)
_____ (Other -- specify)

Submit:
2 copies if no amdts.
4 copies if amdts.
5 copies if to be printed engrossed.

Anthony J. Interni
(Chairman)

Sen. Lent
will lead floor discussion.
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JL

OREGON LEGISLATIVE ASSEMBLY—1969 REGULAR SESSION

HOUSE AMENDMENTS TO HOUSE BILL 1515

By COMMITTEE ON JUDICIARY

May 8, 1969

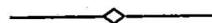
- 1 On page 2 of the printed bill, line 2, delete “creating new provisions;”.
- 2 In line 3, delete “30.285, 30.300,” and in the same line after “221.924;”
- 3 insert “repealing ORS 366.430, 368.940 and 382.320;”.
- 4 In line 11, after “(2)” delete the rest of the line and insert “Every
- 5 public body is immune from liability for.”.
- 6 Delete lines 27 through 32 and insert:
 - 7 “(3) Neither a public body nor its officers, employes and agents acting
 - 8 within the scope of their employment or duties are liable for injury or
 - 9 damage:
- 10 “(a) Arising out of riot, civil commotion or mob action or out of any
- 11 act or omission in connection with the prevention of any of the foregoing.
- 12 “(b) Because of an act done or omitted under apparent authority of
- 13 a law, resolution, rule or regulation which is unconstitutional, invalid or
- 14 inapplicable except to the extent that they would have been liable had
- 15 the law, resolution, rule or regulation been constitutional, valid and
- 16 applicable, unless such act was done or omitted in bad faith or with
- 17 malice.”.
- 18 On page 3, line 5, after “30.300” delete the rest of the line.
- 19 Delete line 6.
- 20 In line 7, delete “of their employment or duties” and in the same line
- 21 after “not” delete the rest of the line.
- 22 In line 10, after “\$25,000” insert “to any claimant”.
- 23 In line 12, after “single” insert “accident or”.
- 24 Delete line 13.

NOTE: Matter in *italics* in an amended section is new; matter ~~lined out and bracketed~~ is existing law to be omitted; complete new sections begin with **Section .**

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- 1 In line 14, delete "(c)" and insert "(b)" and in the same line after "all"
- 2 insert "other" and after "single" insert "accident or".
- 3 After line 15, insert:
- 4 "(c) \$300,000 for any number of claims arising out of a single accident
- 5 or occurrence."
- 6 In line 16, delete "against a public body".
- 7 In line 21, after "exceeds" delete the rest of the line.
- 8 In line 22, delete "or the" and restore the comma and delete the rest of
- 9 the line.
- 10 In line 32, delete "45" and insert "180".
- 11 On page 4, line 1, after "the" insert "state agency against whom the
- 12 claim is made or to the".
- 13 In line 4, after "notice" delete the semicolon and insert a period.
- 14 Delete lines 5 through 7.
- 15 In line 16, delete "one year after such notice" and insert "two years
- 16 after the date of such accident or occurrence".
- 17 Delete lines 21 through 34.
- 18 On page 5, delete lines 1 through 34.
- 19 On page 6, delete lines 1 through 8.
- 20 In line 9, delete "10" and insert "4".
- 21 In line 24, delete "11" and insert "5".
- 22 On page 7, after line 5, insert:
"Section 6. ORS 366.430, 368.940 and 382.320 are repealed."
- 23 In line 6, delete "12" and insert "7".



HOUSE AMENDMENTS TO HOUSE BILL 1515

By COMMITTEE ON JUDICIARY

May 8, 1969

On page 2 of the printed bill, line 3, delete "existing and future".

On page 2 of the printed bill, line 3, delete "30.285, 30.300,"

and in the same line after "221.924;" insert "repealing ORS 366.430, 368.940 and 382.320;".

In line 11, after "(2)" delete the rest of the line and insert "Every public body is immune from liability for:".

Delete lines 27 through 32 and insert:

"(3) Neither a public body nor its officers, employes and agents acting within the scope of their employment or duties are liable for injury or damage:

"(a) Arising out of riot, civil commotion or mob action or out of any act or omission in connection with the prevention of any of the foregoing.

"(b) Because of an act done or omitted under apparent authority of a law, resolution, rule or regulation which is unconstitutional, invalid or inapplicable except to the extent that they would have been liable had the law, resolution, rule or regulation been constitutional, valid and applicable, unless such act was done or omitted in bad faith or with malice."

Don Wilson
Rep. Don Wilson Chairman

2 copies if no amendments
Submit: 4 copies if amendments
5 copies if to be printed engrossed

Retain: 1 copy for committee files

Rep. Wallace Carson
floor discussion on this measure.

will lead

Exhibit 2

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On page 3, Line 5, after "30.300" delete the rest of the line.

Delete line 6.

In line 7, delete "of their employment or duties" and in the same line after "not" delete the rest of the line.

In line 10, after "\$25,000" insert "to any claimant".

In line 12, after "single" insert "accident or".

Delete line 13.

In line 14, delete "(c)" and insert "(b)" and in the same line after "all" insert "other" and after "single" insert "accident or".

After line 15, insert:

"(c) \$300,000 for any number of claims arising out of a single accident or occurrence.".

In line 16, delete "against a public body".

In line 21, after "exceeds" delete the rest of the line.

In line 22, delete "or the" and restore the comma and delete the rest of the line.
~~Delete line 22 and insert "\$300,000."~~

In line 32, delete "45" and insert "180".

On page 4, line 1, after "the" insert "state agency against whom the claim is made or to the".

same place
In line 4, after "notice" delete the ~~comma~~ and insert a period.

Delete lines 5 through 7.

In line 16, delete "one year after such notice" and insert "two years after the date of such accident or ~~occurrence~~".

Delete lines 21 through 34.

On page 5, delete lines 1 through 34.

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On page 6, delete lines 1 through 8.

In line 9, delete "10" and insert "4".

In line 24, delete "11" and insert "5".

On page 7, after line 5, insert:

bf
"Section 6. ORS 366.430, 368.940 and 382.320 are repealed."

In line 6, delete "12" and insert "7".

OREGON LEGISLATIVE ASSEMBLY—1969 REGULAR SESSION

House Bill 1515

Sponsored by COMMITTEE ON JUDICIARY (at the request of the League of Oregon Cities, the Association of Oregon Counties and the Oregon School Boards Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Revises scope of governmental tort liability, related procedural provisions and recovery limitations. Directs that claims against state be presented to Attorney General and all others to appropriate public officers.

Creates immunity from tort liability for public officers, employees and agents as to claims arising out of certain governmental activities.

Declares an emergency.

NOTE: Matter in *italics* in an amended section is new; matter ~~lined out and bracketed~~ is existing law to be omitted; complete new sections begin with **Section**.

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1 A BILL FOR AN ACT

2 Relating to governmental tort liability; creating new provisions; amending
3 ORS 30.265, 30.270, 30.275, 30.285, 30.300, 30.320 and 221.924; and declar-
4 ing an emergency.

5 *Be It Enacted by the People of the State of Oregon:*

6 Section 1. ORS 30.265 is amended to read:

7 30.265. (1) Subject to the limitations of ORS 30.260 to 30.300, every
8 public body is liable for its torts and those of its officers, employes and
9 agents acting within the scope of their employment or duties, whether arising
10 out of a governmental or proprietary function.

11 (2) Subsection (1) of this section does not apply to:

12 (a) Any claim for injury to or death of any person or injury to property
13 resulting from an act or omission of an officer, employe or agent of a public
14 body when such officer, employe or agent is immune from liability.

15 (b) Any claim for injury to or death of any person covered by the
16 Workmen's Compensation Law.

17 (c) Any claim in connection with the assessment and collection of taxes.

18 [(d) Any claim based upon an act or omission of an officer, employe or
19 agent, exercising due care, in the execution of a valid or invalid statute, charter,
20 ordinance, resolution or regulation.]

21 [(e)] (d) Any claim based upon the performance of or the failure to
22 exercise or perform a discretionary function or duty, whether or not the
23 discretion is abused.

24 [(f)] (e) Any claim [against a public body as to which the public body is
25 immune from liability or its liability is limited] which is limited or barred by
26 the provisions of any other statute.

27 (f) Any claim except a claim for the recovery of, and limited to, com-
28 pensatory damages for injury to or death of a person or injury to or
29 destruction of tangible property.

30 (3) As to any claim enumerated in subsection (2) of this section, a
31 public body shall be liable only in accordance with any other applicable
32 statute.

33 (4) ORS 30.260 to 30.300 do not apply to any claim against any public
34 body arising before July 1, 1968. Any such claim may be presented and

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1 enforced to the same extent and subject to the same procedure and restric-
2 tions as if ORS 30.260 to 30.300 had not been adopted.

3 Section 2. ORS 30.270 is amended to read:

4 30.270. (1) Liability of ~~any~~ a public body ~~for any claim~~ on claims
5 within the scope of ORS 30.260 to 30.300 and liability of officers, employes
6 and agents of a public body on claims based on conduct within the scope
7 of their employment or duties shall not separately or in combination
8 exceed:

9 (a) ~~\$25,000 when the claim is one for damage to or destruction of property~~
10 ~~and \$50,000 to any claimant in any other case.~~ \$25,000 for any number of
11 claims for damage to or destruction of property, including consequential
12 damages, arising out of a single occurrence.

13 (b) \$300,000 for any number of claims arising out of a single occurrence.

14 (c) \$50,000 to any claimant for all claims arising out of a single occur-
15 rence.

16 (2) No award for damages against a public body on any such claim
17 shall include punitive damages. The limitation imposed by this section on
18 individual claimants includes damages claimed for loss of services or loss
19 of support arising out of the same tort.

20 (3) Where the amount awarded to or settled upon multiple claimants
21 exceeds the \$25,000 limit of paragraph (a) of subsection (1) of this section
22 or the \$300,000~~,~~ limit of paragraph (b) of subsection (1) of this section
23 any party may apply to any circuit court to apportion to each claimant his
24 proper share of the total amount limited by subsection (1) of this section.
25 The share apportioned each claimant shall be in the proportion that the
26 ratio of the award or settlement made to him bears to the aggregate awards
27 and settlements for all claims arising out of the occurrence.

28 Section 3. ORS 30.275 is amended to read:

29 30.275. (1) Every person who claims damages from a public body for
30 or on account of any loss or injury within the scope of ORS 30.260 to
31 30.300 shall cause to be presented to ~~the governing body of~~ the public
32 body within 45 days after the alleged loss or injury a written notice stating
33 the time, place and circumstances thereof, and the amount of compensation
34 or other relief demanded. Claims against the State of Oregon shall be

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1 presented to the Attorney General. Claims against any other public body
 2 shall be presented to a person upon whom process could be served in
 3 accordance with subsection (2) of ORS. 15.080. Failure to state the amount
 4 of compensation or other relief demanded does not invalidate the notice;
 5 but, in such case, the claimant shall furnish full information regarding the
 6 nature and extent of the injuries and damages within 30 days after written
 7 demand by the public body.

8 (2) When the claim is for death, the notice may be presented by the
 9 personal representative, surviving spouse or next of kin, or by the consular
 10 officer of the foreign country of which the deceased was a citizen, within
 11 one year after the alleged injury or loss resulting in such death. However,
 12 if the person for whose death the claim is made has presented a notice
 13 that would have been sufficient had he lived, an action for wrongful
 14 death may be brought without any additional notice.

15 (3) No action shall be maintained unless such notice has been given
 16 and unless the action is commenced within one year after such notice. The
 17 time for giving such notice does not include the time, not exceeding 90
 18 days, during which the person injured is ~~incapacitated by~~ unable to give
 19 the notice because of the injury ~~from giving the notice~~ or because of
 20 minority, incompetency or other incapacity.

21 Section 4. ORS 30.285 is amended to read:

22 30.285. (1) The governing body of any public body may defend, save
 23 harmless and indemnify any of its officers, employes and agents, whether
 24 elective or appointive, against any tort claim or demand, whether ground-
 25 less or otherwise, arising out of an alleged act or omission occurring in the
 26 performance of duty.

27 (2) The provisions of subsection (1) of this section do not apply in
 28 case of malfeasance in office or wilful or wanton neglect of duty.

29 (3) This section does not repeal or modify ORS 243.510 to 243.620.

30 (4) A determination by the governing body of a public body that one of
 31 its officers, employes or agents is eligible for assistance in accordance with
 32 subsections (1) and (2) shall be final and conclusive evidence of such
 33 eligibility; provided, however, that the governing body may require reim-
 34 bursement as provided in subsection (2) of ORS 243.620.

1 Section 5. ORS 30.300 is amended to read:
2 30.300. ORS 30.260 to 30.300 ~~is exclusive and~~ supersedes all ~~home rule~~
3 *conflicting city and county charter provisions on the same subject and all*
4 *conflicting laws and ordinances on the same subject.*

5 **Section 6.** Sections 7 to 9 of this Act are added to and made a part of
6 ORS chapter 30.

7 **Section 7.** If a public body is under a mandatory duty imposed by a
8 constitutional, statutory or charter provision designed to protect against
9 the risk of a particular kind of injury, its failure to discharge such duty
10 shall not constitute negligence per se and it shall only be liable for failure
11 to exercise reasonable care to discharge the duty.

12 **Section 8.** Neither a public body nor is officers, employes and agents
13 acting within the scope of their employment or duties are liable for injury
14 or damage because of:

15 (1) Failure to establish a police or fire department or otherwise to
16 provide police or fire protection service, or, if a public body has undertaken
17 to provide police or fire protection service, because of failure to provide
18 or maintain sufficient personnel, equipment or other police or fire protec-
19 tion facilities.

20 (2) The issuance, denial, suspension or revocation of, or the failure or
21 refusal to issue, deny, suspend or revoke, any permit, license, certificate,
22 approval, order or similar authorization where the public body or its
23 officer, employe or agent is authorized by law to determine whether or
24 not such authorization should be issued, denied, suspended or revoked.

25 (3) Failure to make an inspection, or by reason of making an inadequate
26 or negligent inspection of any real or personal property.

27 (4) Adoption or failure to adopt any law, resolution, rule or regulation,
28 or because of failure to enforce any law, resolution, rule or regulation.

29 (5) Dissemination of information, failure to disseminate information,
30 dissemination of erroneous information, or negligent misrepresentation.

31 (6) The occurrence or failure to prevent riot, unlawful assembly, public
32 demonstration, mob violence or other civil disturbance.

33 (7) An act done or omitted under apparent authority of a law, resolu-
34 tion, rule or regulation which is unconstitutional, invalid or inapplicable

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1 except to the extent that they would have been liable had the law, reso-
 2 lution, rule or regulation been constitutional, valid and applicable, unless
 3 such act was done or omitted in bad faith or with malice.

4 **Section 9.** Except as otherwise provided by statute, an officer, employe
 5 or agent of a public body is not liable for an injury caused by the act or
 6 omission of another person. Nothing in this section exonerates such an
 7 officer, employe or agent from liability for injury proximately caused by
 8 his own negligent or wrongful conduct.

9 Section 10. ORS 30.320 is amended to read:

10 30.320. A suit or action may be maintained against any county and
 11 against the State of Oregon by and through and in the name of the appro-
 12 priate state agency upon a contract made by the county in its corporate
 13 character, or made by such agency and within the scope of its authority
 14 ~~+ and not otherwise~~; provided, however, that no suit or action may be
 15 maintained against any county or the State of Oregon upon a contract
 16 relating to the care and maintenance of an inmate or patient of any county
 17 or state institution. An action or suit may be maintained against any other
 18 public corporation mentioned in ORS 30.310 ~~in its corporate character, and~~
 19 ~~within the scope of its authority, or~~ for an injury to the rights of the plaintiff
 20 arising from some act or omission of such other public corporation *within*
 21 *the scope of its authority. An action may be maintained against any gov-*
 22 *ernmental unit mentioned in ORS 30.310 for liability in tort only as pro-*
 23 *vided in ORS 30.260 to 30.300.*

24 Section 11. ORS 221.924 is amended to read:

25 221.924. ~~(1)~~ The council may, whenever it deems it expedient, im-
 26 prove the public grounds within any city referred to in ORS 221.906, and
 27 establish and open additional streets and alleys therein. The power and
 28 authority to improve streets includes the power and authority to construct,
 29 improve, pave, repair, and keep in repair, sidewalks and pavements, and
 30 to determine and provide everything convenient and necessary concerning
 31 such improvements and repairs.

32 ~~(2) Any such city shall not in any event be liable for any damages to any~~
 33 ~~person for injury caused by any defect, or dangerous place, at or in any side-~~
 34 ~~walk, crosswalk, street, alley, bridge, public ground, public building, or ditch;~~

1 unless such city has had actual notice of such defect or dangerous place, and a
2 reasonable time thereafter in which to repair or remove such defect or dangerous
3 place before the happening of such accident or injury. In no case shall more
4 than \$100 be recovered as damages from any such city for such accident or
5 injury.]

6 **Section 12.** This Act being necessary for the immediate preservation of
7 the public peace, health and safety, an emergency is declared to exist, and
8 this Act shall take effect upon its passage.

A BILL FOR

AN ACT

Relating to governmental tort liability; creating new provisions;
and amending ORS 30.265, 30.270, 30.275, 30.285, 30.300,
30.320 and 221.924; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

Section 1. ORS 30.265 is amended to read:

30.265. (1) Subject to the limitations of ORS 30.260 to 30.300, every public body is liable for its torts and those of its officers, employes and agents acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function.

(2) Subsection (1) of this section does not apply to:

(a) Any claim for injury to or death of any person or injury to property resulting from an act or omission of an officer, employe or agent of a public body when such officer, employe or agent is immune from liability.

(b) Any claim for injury to or death of any person covered by the Workmen's Compensation Law.

(c) Any claim in connection with the assessment and collection of taxes.

[(d) Any claim based upon an act or omission of an officer, employe or agent, exercising due care, in the execution of a valid or invalid statute, charter, ordinance, resolution or regulation.]

[(e)] (d) Any claim based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.

[(f)] (e) Any claim [against a public body as to which the public body is immune from liability or its liability is limited] which is limited or barred by the provisions of any other statute.

(f) Any claim except a claim for the recovery of, and limited to, compensatory damages for injury to or death of a person or injury to or destruction of tangible property.

(3) As to any claim enumerated in subsection (2) of this section, a public body shall be liable only in accordance with any other applicable statute.

(4) ORS 30.260 to 30.300 do not apply to any claim against any public body arising before July 1, 1968. Any such claim may be presented and enforced to the same extent and subject to the same procedure and restrictions as if ORS 30.260 to 30.300 had not been adopted.

Section 2. ORS 30.270 is amended to read:

30.270. (1) Liability of [any] a public body [on any claim] on claims within the scope of ORS 30.260 to 30.300 and liability of officers, employes and agents of a public body on claims based on conduct within the scope of their employment or duties shall not separately or in combination exceed:

(a) [\$25,000 when the claim is one for damage to or destruction

of property and \$50,000 to any claimant in any other case.] \$25,000 for any number of claims for damage to or destruction of property, including consequential damages, arising out of a single occurrence.

(b) \$300,000 for any number of claims arising out of a single occurrence.

(c) \$50,000 to any claimant for all claims arising out of a single occurrence.

(2) No award for damages against a public body on any such claim shall include punitive damages. The limitation imposed by this section on individual claimants includes damages claimed for loss of services or loss of support arising out of the same tort.

(3) Where the amount awarded to or settled upon multiple claimants exceeds the \$25,000 limit of subsection (1)(e) or the \$300,000 limit of subsection (1)(e) any party may apply to any circuit court to apportion to each claimant his proper share of the total amount limited by subsection (1) of this section. The share apportioned each claimant shall be in the proportion that the ratio of the award or settlement made to him bears to the aggregate awards and settlements for all claims arising out of the occurrence.

Section 3. ORS 30.275 is amended to read:

30.275. (1) Every person who claims damages from a public body for or on account of any loss or injury within the scope of ORS 30.260 to 30.300 shall cause to be presented to [the governing body of] the public body within 45 days after the alleged loss or injury a written notice stating the time, place and circumstances thereof, and the amount of compensation or other relief demanded.

Claims against the State of Oregon shall be presented to the Attorney

General. Claims against any other public body shall be presented

to a person upon whom process could be served in accordance with subsection (2) of

(e) ORS 15.080 subsection (2). Failure to state the amount of compensation or other relief demanded does not invalidate the notice; but, in such case, the claimant shall furnish full information regarding the nature and extent of the injuries and damages within 30 days after written demand by the public body.

(2) When the claim is for death, the notice may be presented by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has presented a notice that would have been sufficient had he lived, an action for wrongful death may be brought without any additional notice.

(3) No action shall be maintained unless such notice has been given and unless the action is commenced within one year after such notice. The time for giving such notice does not include the time, not exceeding 90 days, during which the person injured is [incapacitated] *by* unable to give the notice because of the injury [from giving the notice] or because of minority, incompetency or other incapacity.

Section 4. ORS 30.285 is amended to read:

30.285. (1) The governing body of any public body may defend, save harmless and indemnify any of its officers, employes and agents, whether elective or appointive, against any tort claim or demand,

whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty.

(2) The provisions of subsection (1) of this section do not apply in case of malfeasance in office or wilful or wanton neglect of duty.

(3) This section does not repeal or modify ORS 243.510 to 243.620.

(4) A determination by the governing body of a public body that one of its officers, employes or agents is eligible for assistance in accordance with subsections (1) and (2) shall be final and conclusive evidence of such eligibility; provided, however, that the governing body may require reimbursement as provided in ORS 243.620. (2)

Section 5. ORS 30.300 is amended to read:

30.300. ORS 30.260 to 30.300 [is exclusive and] supersedes all [home rule] conflicting city and county charter provisions on the same subject and all conflicting laws and ordinances on the same subject.

Section 6. Sections 7 to 9 of this Act are added to and made a part of ORS chapter 30.

Section 7. If a public body is under a mandatory duty imposed by a constitutional, statutory or charter provision designed to protect against the risk of a particular kind of injury, its failure to discharge such duty shall not constitute negligence per se and it shall only be liable for failure to exercise reasonable care to discharge the duty.

Section 8. Neither a public body nor its officers, employes and

agents acting within the scope of their employment or duties are liable for injury or damage because of:

- (1) Failure to establish a police or fire department or otherwise to provide police or fire protection service, or, if a public body has undertaken to provide police or fire protection service, because of failure to provide or maintain sufficient personnel, equipment or other police or fire protection facilities.
- (2) The issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization where the public body or its officer, employe or agent is authorized by law to determine whether or not such authorization should be issued, denied, suspended or revoked.
- (3) Failure to make an inspection, or by reason of making an inadequate or negligent inspection of any real or personal property.
- (4) Adoption or failure to adopt any law, resolution, rule or regulation, or because of failure to enforce any law, resolution, rule or regulation.
- (5) Dissemination of information, failure to disseminate information, dissemination of erroneous information, or negligent misrepresentation.
- (6) The occurrence or failure to prevent riot, unlawful assembly, public demonstration, mob violence or other civil disturbance.
- (7) An act done or omitted under apparent authority of a law, resolution, rule or regulation which is unconstitutional, invalid or

inapplicable except to the extent that they would have been liable had the law, resolution, rule or regulation been constitutional, valid and applicable, unless such act was done or omitted in bad faith or with malice.

Section 9. Except as otherwise provided by statute, an officer, employe or agent of a public body is not liable for an injury caused by the act or omission of another person. Nothing in this section exonerates such an officer, employe or agent from liability for injury proximately caused by his own negligent or wrongful conduct.

Section 10. ORS 30.320 is amended to read:

30.320. A suit or action may be maintained against any county and against the State of Oregon by and through and in the name of the appropriate state agency upon a contract made by the county in its corporate character, or made by such agency and within the scope of its authority [and not otherwise]; provided, however, that no suit or action may be maintained against any county or the State of Oregon upon a contract relating to the care and maintenance of an inmate or patient of any county or state institution. An action or suit may be maintained against any other public corporation mentioned in ORS 30.310 [in its corporate character, and within the scope of its authority, or] for an injury to the rights of the plaintiff arising from some act or omission of such other ^{public} corporation within the scope of its authority. An action may be maintained against any governmental unit mentioned in ORS 30.310 for liability in tort only as provided in ORS 30.260 to 30.300.

Section 11. ORS 221.924 is amended to read:

221.924. [(1)] The council may, whenever it deems it expedient,

improve the public grounds within any city referred to in ORS 221.906, and establish and open additional streets and alleys therein. The power and authority to improve streets includes the power and authority to construct, improve, pave, repair, and keep in repair, sidewalks and pavements, and to determine and provide everything convenient and necessary concerning such improvements and repairs.

[(2) Any such city shall not in any event be liable for any damages to any person for injury caused by any defect, or dangerous place, at or in any sidewalk, crosswalk, street, alley, bridge, public ground, public building, or ditch, unless such city has had actual notice of such defect or dangerous place, and a reasonable time thereafter in which to repair or remove such defect or dangerous place before the happening of such accident or injury. In no case shall more than \$100 be recovered as damages from any such city for such accident or injury.]

Section 12. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act shall take effect upon its passage.

HOUSE BILL BACKRECEIVED
HOUSE DESK

▼ CROSS OUT INAPPLICABLE WORDS ▼

BILL }
 RESOLUTIONX } NUMBER 1515
 MEMORIAL }

1969 FEB 17 AM 102

Title:

Relating to governmental tort liability; creating new provisions; amending ORS 30.265, 30.270, 30.275, 30.285, 30.300, 30.320 and 221.924; and declaring an emergency.

Introduced by: ~~Representative~~

DW the
Committee on Judiciary, at the request of League of Oregon Cities,
the Association of Oregon Counties and Oregon School Boards Association
the

Staple

ADDITIONAL SIGNERS**HOUSE****SENATE**

Akeson	Ingalls	Atiyeh
Anunsen	Johnson	Bain
Bazett	Kennedy	Bateson
Bennett	Lang	Boivin
Boe	Macpherson	Burns
Bradley	Mann	Cook
Browne	Markham	Dement
Carson	Martin	Eivers
Chuinard	McCready	Elfstrom
Cole	McGilvra	Fadeley
Crothers	McKenzie	Flegel
Davis	Meeker	Hallock
Day	Peck	Holmstrom
Detering	Priestley	Hoyt
Dielschneider	Pynn	Husband
Dugdale	Richards	Huston
Elliott	Ripper	Inskeep
Eymann	Roberts	Ireland
Frost	Rogers	Jernstedt
Graham	Skelton	Lent
Groener	Smith	McKay
Gwinn	Stathos	Morgan
Haas	Stevenson	Newbry
Hanneman	Thornton	Onderkirk
Hansell	Turner	Potts
Hart	Willits	Raymond
Hartung	Wilson, Don	Roberts
Heard	Wilson, M. Keith	Stadler
Howard	Wingard	Willner
Howe	Young	Yturri

Exhibit 2

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